

SHREE SHYAMJI TRANSPORT COMPANY

v.

FOOD CORPORATION OF INDIA & ORS.

(Civil Appeal No. 9379 of 2014)

OCTOBER 9, 2014.

[T.S. THAKUR AND R. BANUMATHI, JJ.]

*Tender – Non-consideration of bid of appellant-tenderer – Invoking disqualification condition on the ground that his Earnest Money Deposit was forfeited in an earlier tender – Held: Debarment of the tenderer was not justifiable on the basis of earlier case – In that case default was not on account of the tenderer.*

Allowing the appeals, the Court

**HELD:** While considering the appellant's tender for Mandi Labour Contract, the respondent-Corporation was not justified in invoking Clause 4 (III) of the Disqualification Conditions of Model Tender Form, on the ground that the tender of the appellants pertaining to Road Transport Contract was earlier rejected and that appellant's Earnest Money Deposit was forfeited. Insofar as Road Transport Contract Hathin-Rajasthan is concerned, the High Court had found that there was no intentional lapse on the part of the appellant and that delay in furnishing the security and bank guarantee was on account of failure of banking operation, and that order attained finality. Therefore, the debarment of the appellants is not justifiable. [Para 11, 12] [185-E, H; 186-A, C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9379 of 2014.

From the Judgment & Order dated 26.07.2012 of the High

A Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 8415 of 2012.

WITH

C.A. No. 9380 of 2014.

B Jasbir Singh Malik, S.K. Sabharwal for the Appellant.  
Ajit Pudasery, J. Pudasery, K. Vijayan, Shruti S. Hazarika for the Respondents.

The Judgment of the Court was delivered by

C R. BANUMATHI, J. 1. Leave granted. These appeals arise out of common order of the Punjab and Haryana High Court dated 26.7.2012 passed in CWP Nos. 8415/2012 & 8416/2012 whereby the High Court declined to interfere with the action of the Food Corporation of India (FCI) rejecting tender of the appellants-firms.

D 2. Brief facts leading to the filing of these appeals are as follows:- The appellants are partnership firms having five partners. Respondent No. 2 - FCI invited tenders for Mandi Labour Contract (MLC) for its centres at Uchana, Sonapat, Narwana and Safidon and the appellants applied for the tender. E The tender consisted of two parts - technical bid and price bid. As per the procedure, on successfully qualifying the technical bid, the price bid was to be opened. The appellants were eligible in technical bid thereby making themselves qualified for opening of price bid. The said price bid was opened on F 2.3.2012. The appellants' bid was not considered by FCI, in view of the fact that in the earlier tender of Road Transport Contract (RTC) of Hathin-Rajasthan, the appellants had failed to deposit the security deposit and bank guarantee within the stipulated period as required and the Earnest Money Deposit G (EMD) of the appellants had been forfeited vide Order dated 5.11.2011 and hence, the appellants' MLC tender was rejected invoking sub clause (III) of Clause 4 of the Disqualification Conditions. According to the appellants, earlier tender of the appellants was rejected by an Order dated 5.11.2011 invoking H Clause 7 of the Model Tender Form (MTF). The appellant-Shree

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Shyamji Transport Company challenged the said Order dated 5.11.2011 by filing CWP No.21694/2011 which was disposed of by Order dated 6.3.2012 in which the Court observed that FCI had not invoked Clause 7 of the MTF to debar the appellant-Shree Shyamji Transport Company for the contract period and the apprehension of the appellant was ill-founded. In the light of the observations in CWP No.21694/2011, appellants contend that the Order dated 21.3.2012 rejecting the appellants' tender for MLC invoking Clause 4 (III) is unsustainable.

3. Challenging action of the respondents - FCI in not considering their MLC tender, the appellants filed two writ petitions bearing Nos. CWP 8415/2012 and 8416/2012 to quash the communication dated 21.3.2012 and also prayed for consideration of their price bid with regard to MLC tender dated 14.3.2012. The High Court dismissed the writ petitions by a common Order dated 26.7.2012, *inter alia*, on the grounds:- (i) In the Writ Petition No.21694/2011, forfeiture of Earnest Money Deposit (EMD) of the appellants was not set aside by the Court and forfeiture of earnest money stood sustained justifying the invocation of Clause 4 (III); (ii) appellants had also not challenged the action of the respondents declaring it to be disqualified under Clause 4 (III) of the MTF. Aggrieved appellants are before us.

4. Assailing the impugned order, Mr. Jasbir Singh Malik, learned counsel appearing for the appellants submitted that in the light of the order dated 6.3.2012 passed in CWP No.21694/2011, it was not open to the respondents to forfeit the earnest money in respect of Hathin -Rajasthan RTC tender by invoking Clause 7 of the MTF and the learned High Court did not correctly interpret its earlier order passed in CWP No.21694/2011. Learned counsel further submitted that the High Court has committed an error in observing that the appellant has not challenged the action of the respondents declaring it to be disqualified under Clause 4 (III) of the MTF

A whereas the appellant-firm had actually challenged the action of the FCI disqualifying the appellant under Clause 4 (III) of the MTF in CWP No. 8415/2012, contending that Clause 4 (III) could not have been invoked against the appellants.

B 5. Refuting the above contentions, Mr. Ajit Pudussery, learned counsel appearing for the respondents, submitted that admittedly EMD of the appellant-firm in RTC Hathin–Rajasthan tender was forfeited and forfeiture of EMD was not set aside by the High Court in the CWP No.21694/2011 and FCI rightly invoked clause 4(III) of the MTF against the appellants in MLC  
C Tender. It was submitted that in CWP No.21694/2011, the High Court has wrongly assumed that Clause 7 of the MTF was not being invoked, when in fact action had been taken under  
D Clause 7 only and thus the presumption made by the High Court in CWP No.21694/2011 is contrary to the record. Learned  
E counsel further submitted that strict compliance of tender conditions are provided to ensure that only serious tenderers participate in the bids as in case after the award of contract if the tenderer fails to perform his due obligations, huge amount of public money is wasted in re-tendering and also creating a  
F situation affecting the movement and distribution of food grains which is not in public interest and the High Court rightly interpreted Clause 4(III) and the impugned order warrants no  
G interference.

F 6. We have considered the rival submissions made by the learned counsel for the parties and perused the record. The question falling for consideration is that in the light of the observations made in CWP No.21694/2011 whether the High Court was right in upholding the action of the respondents-FCI declaring the appellants-firms to be disqualified under Clause  
G 4 (III) of the MTF.

H 7. Clause 4 (III) of the MTF stipulates that the tenderer whose EMD was forfeited in any other contract with FCI during the last five years will be ineligible to participate in the bid. For

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better appreciation, we may refer to the relevant clause 4 (III) and relevant paras in Clause 5 of the MTF which read as under:- A

**“Clause 4. Disqualification Conditions**

..... B

- (III) Tenderer whose Earnest Money Deposit and/or Security Deposit has been forfeited by Food Corporation of India or any Department of Central or State Government or any other Public Sector/ Undertaking, during the last five years, will be ineligible. C

**“Clause 5. Details of Sister Concerns.**

..... D

- (i) The blacklisted parties by FCI or Govt./Quasi Govt. Organization will not be qualified.
- (ii) The parties whose EMD is forfeited by FCI will not be qualified. E
- (iii) Food Corporation of India reserves the right not to consider parties having any dispute with Food Corporation of India in order to protect its interest.” F

8. According to the respondents, EMD of the appellant-Shree Shyamji Transport Company was forfeited in the earlier tender of Road Transport Contract (RTC) -Hathin-Rajasthan, making the appellant ineligible to bid in the MLC tender and therefore, the bid of the appellant for MLC was rightly rejected by the respondents-FCI by Order dated 21.3.2012. G

9. Insofar as RTC tender for Hathin–Rajasthan is concerned, it appears from the record and the observations of the High Court in CWP No. 21694/2011 that there was no H

- A ground that the tender of the appellants pertaining to RTC Hathin–Rajasthan was earlier rejected and that appellant’s EMD was forfeited. High Court, in our view, has not properly appreciated its own observations in CWP No.21694/2011 that FCI has not invoked Clause 7 of the MTF to debar the
- B appellants for the contract period.

C 12. The impugned tenders pertain to Mandi Labour Contract (MLC) for which the appellants submitted their bid on 2.3.2012 and the appellants have already suffered debarment for about three years. Considering the facts and circumstances of the case and in the light of High Court’s observation made in CWP No.21694/2011, in our view, the debarment of the appellants is not justifiable and the impugned order of the High Court cannot be sustained.

- D 13. In the result, the impugned order of the High Court is set aside and the appeals are allowed. No order as to costs.

Kalpana K. Tripathy

Appeals allowed.